

B104 (Form 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET

(Instructions on Reverse)

ADVERSARY PROCEEDING NO.**PLAINTIFF(S)**

Telge Peiris and Ramya Peiris

DEFENDANT(S)

Ocwen Loan Servicing, LLC, d/b/a City National Bank

ATTORNEY(S) (Firm Name, Address, Telephone No.)

Law Offices of Gus Michael Farinella, PC
 147 West 35th Street
 Suite 1008
 New York, NY 10001
 212-675-6161

ATTORNEY(S) (If Known)

Michael T. Rozea, Esq.
 Leopold & Associates, PLLC
 80 Business Park Drive, Suite 110
 Armonk, NY 10504

PARTY (Check One Box Only)

☒ Debtor ☐ U.S. Trustee
☐ Creditor ☐ Trustee ☐ Other

PARTY (Check One Box Only)

☐ Debtor ☐ U.S. Trustee
☒ Creditor ☐ Trustee ☐ Other

CAUSE OF ACTION (Write a brief statement of cause of action, including all U.S. statutes involved.)

Reclassify Second Mortgage Loan from Secured to Unsecured (Cramdown)

NATURE OF SUIT

(Number up to 5 boxes with the lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property

- ☐ 11 – Recovery of money/property - § 542 turnover of property
☐ 12 – Recovery of money/property - § 547 preference
☐ 13 – Recovery of money/property - § 548 fraudulent transfer
☐ 14 – Recovery of money/property – other

FRBP 7001(2) – Validity, Priority or Extent of Lien

- ☒ 21 – Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property

- ☐ 31 – Approval of sale of property of estate and of a co-owner - § 363(h)

FRBP 7001(4) – Objection/Revocation of Discharge

- ☐ 41 – Objection/revocation of discharge - § 727(c), (d), (e)

FRBP 7001(5) – Revocation of Confirmation

- ☐ 51 – Revocation of confirmation

FRBP 7001(6) – Dischargeability

- ☐ 66 – Dischargeability - § 523(a)(1), (14), (14A) priority tax claims
☐ 62 – Dischargeability - § 523(a)(2), false pretenses, false representation, actual fraud
☐ 67 – Dischargeability - § 523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

☐ Check if this case involves a substantive issue of state law

☐ Check if a jury trial is demanded in complaint

FRBP 7001(6) – Dischargeability (continued)

- ☐ 61 – Dischargeability - § 523(a)(5), domestic support
☐ 68 – Dischargeability - § 523(a)(6), willful and malicious injury
☐ 63 – Dischargeability - § 523(a)(8), student loan
☐ 64 – Dischargeability - § 523 (a)(15), divorce or separation obligation (other than domestic support)
☐ 65 – Dischargeability – other

FRBP 7001(7) – Injunctive Relief

- ☐ 71 – Injunctive relief – imposition of stay
☐ 72 – Injunctive relief – other

FRBP 7001(8) – Subordination of Claim or Interest

- ☐ 81 – Subordination of claim or interest

FRBP 7001(9) – Declaratory Judgment

- ☐ 91 – Declaratory judgment

FRBP 7001(10) – Determination of Removed Action

- ☐ 01 – Determination of removed claim or cause

Other

- ☐ SS-SIPA Case – 15 U.S.C. §§ 78aaa et seq.
☐ 02 – Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy case)

☐ Check if this is asserted to be a class action under FRCP 23

Demand: \$

Other Relief Sought:

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BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES

NAME OF DEBTOR Telge Peiris and Ramya Peiris		BANKRUPTCY CASE NO. 14-40955	
DISTRICT IN WHICH CASE IS PENDING Eastern District of New York		DIVISION OFFICE Brooklyn	NAME OF JUDGE Lord

RELATED ADVERSARY PROCEEDING (IF ANY)

PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.	
DISTRICT IN WHICH ADVERSARY PROCEEDING IS PENDING		DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Gus Michael Farinella		PRINT NAME OF ATTORNEY (OR PLAINTIFF)	
DATE April 28, 2014			

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet. When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff, if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

----- X
IN RE:

CHAPTER 13

Case No: 14-40955

Telge Peiris and Ramya Peiris

Adversary Pro. No.

Debtors.

----- X

COMPLAINT

Telge Peiris and Ramya Peiris

Adv. No.

Plaintiffs,

Case Assigned to:

Hon. Nancy H. Lord

-against-

Ocwen Loan Servicing, LLC, d/b/a City National Bank

Defendant.

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Plaintiffs Telge Peiris and Ramya Peiris, the Debtors herein, by their Attorneys, the Law Offices of Gus Michael Farinella, PC as and for their Complaint against Ocwen Loan Servicing, LLC, d/b/a City National Bank respectfully allege as follows:

JURISDICTION and VENUE

1. This is an action under 11. U.S.C. Sections 506(a) and 506(d) and Federal Rules of Bankruptcy Procedure Rules 3012, 6009, and 7001 et seq. determining the extent to which the claim of Ocwen Loan Servicing, LLC, d/b/a City National Bank ("Ocwen") is secured and unsecured

with regard to the Second Mortgage they hold on the Debtors' real property, and relegating such creditor to the status of an unsecured creditor as any such claim for the Second Mortgage is a wholly unsecured claim.

2. This Court has jurisdiction of this adversary proceeding pursuant to 28 U.S.C. Sections 151, 157, and 1334.
3. This Court has venue pursuant to 28 U.S.C. §1409(a) insofar as the Debtor filed a petition for relief under Chapter 13 in this District on March 4, 2014.
4. Each of the causes of action in this proceeding is a "core proceedings" within the meaning of 28 U.S.C §157(b)(2).

PARTIES TO THIS ACTION

5. Plaintiffs, Telge Peiris and Ramya Peiris, a legally married couple, reside at 399 Walker Street Staten Island, NY 10303. They filed a joint voluntary petition for relief under Chapter 13 of the Bankruptcy Code on March 4, 2014.
6. Defendant, Ocwen, is a limited liability company, with its principal business offices located at 1661 Worthington Road, Suite 100, West Palm Beach, FL 33409.
7. Upon information and belief, the basis of which is information provided by the Debtors' credit report, monthly billings statements from Ocwen and the Defendant, Ocwen's website, Ocwen has the following addresses:

According to the Ocwen's website Ocwen has an address of:

Ocwen Loan Servicing, LLC
1661 Worthington Road, Suite 100
West Palm Beach, Florida 33409

According to the Monthly billing statement Ocwen has a correspondence address of

Ocwen Loan Servicing, LLC
PO Box 24738
West Palm Beach, FL 33416-4738

BACKGROUND

8. The Debtors own a parcel of real property known as 399 Walker Street Staten Island, NY 10303. The value of the property is \$477,000.00. (Annexed hereto and made a part hereof as “**Exhibit A**” is a copy of a Formal Appraisal of the Debtors’ real property prepared by Ash Sarin of Homeland Appraisals Inc. dated February 2, 2014 stating a value of \$477,000.00)
9. Ocwen holds a first mortgage on the real property located at 399 Walker Street Staten Island, NY 10303. The First mortgage has an account number of 7192289770.
10. Upon information and belief Ocwen, is owed approximately \$486,846.56 on the first mortgage. (Annexed hereto and made a part hereof as “**Exhibit B**” is a copy of the March 2014 monthly billing statement from Ocwen. showing a principal balance owing of \$486,846.56 consisting of \$389,793.61 in Principal balance and \$97,052.95 in Deferred principal balance.)
11. Ocwen holds a Second Mortgage on the real property located at 1399 Walker Street Staten Island, NY 10303. The second mortgage has an account number of 7192289788. Upon information and belief Ocwen is owed approximately \$111,061.00 on the second mortgage.

FIRST CAUSE OF ACTION

12. Plaintiffs repeat and re-allege each and every allegation in Paragraphs 1 through 12 as if set forth fully herein.

13. The total amount due on the First Mortgage is \$486,846.56. The value of the real property located at 399 Walker Street Staten Island, NY 10303 is \$477,000.00. There is no equity in the Debtors' residence past the First Mortgage to secure the Second Mortgage held by Ocwen.
14. The Second Mortgage held by Ocwen has a secured claim pursuant to 11 U.S.C. § 506(a) only to the extent of the value of its collateral, and an unsecured claim for the balance. There is no equity in the subject real property past the First Mortgage also held by Ocwen, and therefore it is submitted that Ocwen's claim for the Second Mortgage it holds on the subject property is entirely unsecured pursuant to 11 U.S.C. §1322(b)(1) and not subject to the anti-modification clause of Section 1322(b)(2).

SECOND CAUSE OF ACTION

15. Plaintiff repeats and re-alleges each and every allegation in Paragraphs 1 through 15 as if set forth fully herein.
16. Pursuant to 11 U.S.C. §506(d) to the extent a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void.
17. As Ocwen's claim for the Second Mortgage on the Debtors' real property must be determined to be wholly unsecured, the lien related to such claim must be avoided in total.

WHEREFORE, it is respectfully requested that an Order of this Court issue.

(a). Determining the extent to which the claim of Ocwen Loan Servicing, LLC is secured or unsecured with regards to the Second Mortgage it holds on the Debtors' real property located at 399 Walker Street Staten Island, NY 10303.

(b). Relegating Ocwen Loan Servicing, LLC to the status of an unsecured creditor to the extent the claim for the Second Mortgage is not an allowed secured claim;

(c) Voiding the Second Mortgage lien held by Ocwen Loan Servicing, LLC;

(d). Directing the Trustee that any timely filed proof of claim by Ocwen Loan Servicing, LLC for the Second Mortgage lien be treated as an unsecured claim under the plan; and for such other relief as is just and appropriate.

Dated: New York, New York
April 28, 2014

/s/ Gus Farinella

Gus Farinella
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New York, NY 10001